

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.4589 of 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the order dated 03.07.2018 passed in I.A.No.2728 of 2014 in O.S.No.454 of 2011 on the file of the Court of II Additional Chief Judge, City Civil Court, Hyderabad.

2. Heard the learned counsel for the petitioners and perused the record.

3. A perusal of the record reveals that the respondent filed O.S.No.454 of 2011 on the file of the Court of II Additional Chief Judge, City Civil Court, Hyderabad, against the petitioners for recovery of suit amount basing on the promissory note dated 13.07.2008. During pendency of the suit, the petitioners filed I.A.No.2728 of 2014 under Section 45 of the Indian Evidence Act to send Ex.A1 promissory note to the expert along with their admitted signatures for comparison and report. The respondent filed counter opposing the claim of the petitioners. The trial Court after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

4. Now, the point that arises for consideration is, whether there is any illegality, irregularity or impropriety in the impugned order?

5. It is not in dispute that the respondent filed O.S.No.454 of 2011 against the petitioners for recovery of the amount basing on a promissory note. The petitioners have taken a plea in their written statement that Ex.A1 promissory note does not bear their signatures. A perusal of the record reveals that the matter is coming up for arguments. The predominant contention of the learned counsel for the petitioners is that the trial Court without considering the scope of Section 45 of the Indian Evidence Act, dismissed the petition.

6. In order to appreciate the contention of the learned counsel for the petitioners, it is not out of place to extract hereunder the prayer portion of the affidavit:

“I therefore pray that this Hon’ble Court may be pleased to send the document i.e. Ex.A1 to the expert i.e. Forensic Science Laboratory, Red Hills, Nampally, Hyderabad for examination and comparison of signatures of the petitioners and the signature of D.W.1 along with their admitted signatures and to pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

7. It is needless to say a person who intends to avail the legal remedy provided under Section 45 of the Indian Evidence Act, ought to file public documents, which bears his signature for comparison. In the instant case, the petitioners did not mention, in their affidavit, any of the document much less public document, which bears their admitted signatures.

They simply asked to send Ex.A1 along with their admitted signatures to Expert for comparison, without mentioning the details of the document containing their signatures.

8. At the time of arguments, the petitioners requested the trial Court to send Ex.A1 along with Ex.B2 cheque for comparison. As rightly pointed out by the trial Court, the second petitioner is the competent person to say whether Ex.A1 promissory note bears his signature or not. For the reasons best known, the second petitioner did not come into witness box to deny the signature on Ex.A1 promissory note. On the other hand, the attester of Ex.A1 fully supported the case of the respondent. The petitioners filed the petition without filing the public documents, which bear their signatures to send the same to Expert for comparison. The signature of the first petitioner in the written statement is not tallying with his signature on the chief examination affidavit. In such circumstances, no purpose will be served by allowing the petition. Further, the opinion given by an expert is not a substantial piece of evidence. The trial Court considered all these aspects in right perspective and dismissed the petition. I am fully endorsing the findings recorded by the trial court. There is no illegality, irregularity or impropriety in the order of the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the civil revision petition lacks merits and *bona fides* and the same is liable to be dismissed.

9. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:09.08.2018

Rns

